BEFORE THE STATE TAX APPEAL BOARD

OF THE STATE OF MONTANA

THE DEPARTMENT OF REVENUE OF THE STATE OF MONTANA, Appellant, -vs- RUDY & DEBORAH URBAN, DOUGLAS & SUSAN DUMM, Respondent.	)	DOCKET NO.: PT-1996-6 <u>NUNC PRO TUNC</u> FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDER and OPPORTUNITY <u>FOR JUDICIAL REVIEW</u>

The above-entitled appeal came on regularly for hearing on the 11th day of June, 1997, in the City of Kalispell, Montana, pursuant to the order of the State Tax Appeal Board of the State of Montana (the Board). The notice of said hearing was duly given as required by law setting the cause for hearing. The Department of Revenue (DOR), represented by Randy Piearson, staff forester, presented testimony in support of the appeal. The taxpayer, represented by Rudy Urban, presented testimony in opposition thereto. At this time and place, testimony was presented, exhibits were received and the Board then took the cause under advisement; and the Board having fully considered the testimony, exhibits

and all things and matters presented to it for its consideration by all parties in the Docket, and being well and fully advised in the premises, finds and concludes as follows:

FINDINGS OF FACT

1. Due, proper and sufficient notice was given of this matter, the hearing hereon, and of the time and place of said hearing. All parties were afforded opportunity to present evidence, oral and documentary.

2. The taxpayer is the owner of the property which is the subject of this appeal and which is described as follows:

> Land only described as Tract 10 in
> SW1/4NW1/4 Sec 4 T28N R22W,
> containing 10 acres, Flathead County, MT.

3. For the 1996 tax year, the DOR appraised the subject property at a value of $33,000 for the land.

4. The taxpayer appealed to the Flathead County Tax Appeal Board requesting agricultural classification for the land.

5. The County Board granted the appeal and ordered the DOR to reclassify the land as agricultural.

6. The DOR then appealed that decision to this Board

stating "The nature of the proof adduced at the hearing was insufficient, from a factual and a legal standpoint, to support the Board's decision."

7. The market value of the land, or the value for taxation purposes, was not an issue before the Board.

DOR CONTENTIONS

Mr. Piearson told the Board that the taxpayer had been before this Board on other occasions in that he had appeals in both 1986 and 1993. In 1994 the property had been granted agricultural classification by the DOR. The local appraisal office asked the taxpayer to reapply in 1996 and demonstrate that he was meeting all the requirements of agricultural classification. The taxpayer filed an application for agricultural classification. In February of 1996 agricultural classification was denied because the necessary receipts to prove the $1,500 income test had been met were not provided to the DOR. The receipts eventually were submitted, but it was determined that even then the majority of the income was generated from plants grown greenhouse style in raised boxes and not in the ground. The taxpayer also filed an AB-26 form on May 28, 1996. That request for classification was also

denied by the DOR.

Mr. Piearson stated that the products raised meet the definition of agricultural products. He stated that they are produced by a lessee, not the owner of the land, but lessee production meets the definition necessary for agricultural classification by the DOR. He stressed that the DOR must consider the products as produced by the land, not in greenhouse flats, for it is the land itself that must produce the income, rather than the activity, to qualify for agricultural taxation classification.

Mr. Piearson presented as exhibits the receipts from the lessee of the property that were eventually supplied to the DOR by the taxpayer. He stated that he could not understand them and that they did not appear to be "legitimate" receipts. He referred to the format of the documents given that really do not "tell you anything" as far as what a person might provide in an "arm's length transaction." One of the receipts is not identified as to who it was from or who it was to, since the top portion was cut off before the DOR received it.

It is the DOR position that the majority of the 1995 income was produced from an activity that was not associated with the land. In actuality the land served only as a

"platform" for the activity and there would be no way to grade or value the activity to determine productive capacity of the land.

The DOR also denied the agricultural classification based on the fact that the owner or his lessee had not filed a farm and ranch personal property reporting form to Flathead County for assessment of any personal property. Mr. Piearson stated that, even if they have no personal property, they should file the reporting form indicating there is no property subject to taxation. In Flathead County, according to Mr. Piearson, the DOR sends such a form annually to those who have agriculturally classified ground, and those who are seeking such classification should file the report.

Mr. Piearson directed the Board to a prior STAB decision PT-1989-156 as supportive of the DOR position in this case.

TAXPAYER CONTENTIONS

Mr. Urban stated that his application for agricultural classification had been denied by the DOR because he did not get the receipts from the sale of the products to

the local appraisal office in time. Mr. Urban stated he believed this hearing was the result of being late and that he was being forced to "jump through the hoops" by the local appraiser to get the property reclassified as agricultural.

Most of the products raised are sold by his lessee at the local farmers market, or "Bob and Mary Anne's farm market." The lessee, who also rents a dwelling on the property, pays $250 per month in rent to the taxpayer. Mr. Urban agreed that the soil is taken from the ground and elevated in flats to enhance the growing season within the greenhouse type structures. He emphasized that the soil comes from the subject land and, therefore, technically the plants are coming from the land.

Mr. Urban stated that the reason he filed for agricultural classification in the first place was because the taxes had gone from $157 per year to $800 per year.

DISCUSSION

The assertion by the DOR that this property had been the subject of prior appeals before this Board is incorrect. It is correct that Mr. Urban had filed appeals in both years 1986 and 1993 but those appeals were on different property.

The statement made at the local board hearing by the appraiser representing the DOR at the hearing that, "Then the law says that under 20 acres that you have to fill out an agricultural classification every year and show the receipts." (tr pg 10, emphasis applied) is an incorrect statement. 15-7-202(2), MCA, states, "Contiguous or noncontiguous parcels of land totaling less than 20 acres under one ownership that are actively devoted to agricultural use are eligible for valuation, assessment, and taxation as agricultural each year that the parcels meet any of the following qualifications:

(a) the parcels produce and the owner or the owner's agent, employee, or lessee markets not less than $1,500 in annual gross income from the raising of agricultural products as defined in 15-1-101; or..."

It is the opinion of this Board that the statement made by the appraiser at the local board hearing is misleading. What is stated in the law is that the DOR may reclassify land as nonagricultural upon giving due notice to the property owner. That authority is found in 15-7-208, MCA. The same statute allows the property owner to petition the department to return the agricultural classification by completing a form prescribed by the department and "by producing whatever

information is necessary to prove that the subject land meets the definition of agricultural land embodied in 15-7-202." Furthermore, 15-7-202(6) clarifies that a parcel having agricultural classification shall continue with that classification until the DOR reclassifies it. Theoretically, the DOR could go through a reclassification on a yearly basis, provide the required sufficient notice to the owner, and thus the owner would need to annually apply for a reclassification.

The Administrative Rules of Montana address the alleged need to apply for agricultural classification on an annual basis. 42.20.139(3)ARM, states: "An annual application is not required. An application is required only:

(a) if the department reclassifies the property and the taxpayer disagrees with the department's reclassification action;
(b) if when submitting the annual farm and ranch assessment, the owner, the owner's immediate family members, the owners's agent, employee or lessee fails to indicate on the form that the land continues to be used primarily for raising agricultural products through marketing not less than $1,500 in annual gross income from the raising of agricultural products produced by the land;
(c) if the owner, the owner's immediate family members, the owner's agent, employee or lessee fails to submit a farm and ranch reporting form; or
(d) submits a farm and ranch reporting form but significantly reduces the amount of property reported from the prior year to the extent there is convincing belief that the property is no longer a viable agricultural unit."

There certainly is nothing "in the law" that forces

an owner of agriculturally classified property to apply for that classification on an annual basis. It is clear that the first action required is not an annual application by the owner but is one by the DOR, namely reclassification. This Board seriously doubts that the DOR is engaging annually in this exercise statewide on all agriculturally classified property. Mr. Piearson testified that the practice only occurs on small, marginally qualified properties. It would appear from the statutes and the administrative rules that it should only occur when there is an indication that something in the operation of or in the land parcel itself has changed to cause the DOR to reclassify the parcel.

The renter or lessee in this case is, by profession, involved in orchard maintenance. He is also involved in the local farmers' market and produce retailing. He owns no land of his own that is qualified and classified as agricultural. The renter was not available at the hearing on this matter. The renter and Mr. Urban were both present with the DOR local office when the receipts were presented to that office. The legitimacy of the method of earning a living by the renter, is not a question in this issue.

The removal of the soil from the ground and placing

it in elevated flats or boxes is not the same as a process where plants are produced in place in tilled soil. The practice of removing the soil could extend to the extreme: removing the soil and placing it in flats or boxes in a greenhouse on an asphalt parking lot. This action would not extend agricultural classification to the parking lot nor the land from which the soil was extracted. In such an instance there would be no way to classify the land based on its productive capacity as required to fit into a category for the basis of valuation for taxation purposes. This Board has ruled in a prior appeal, PT-1987-112 Bitterroot Native Growers v. DOR, that the income produced from greenhouse, or shade house nursery type operations, is not income earned from field crops within the meaning of "products produced by the land."

It is the opinion of this Board that, based on the evidence and testimony provided, the subject parcel does not qualify for agricultural classification, and the appeal of the DOR is hereby granted, and the decision of the Flathead County Tax Appeal Board is reversed.

CONCLUSIONS OF LAW

1. 15-1-101(1)(a)(i), MCA, defines the term

agricultural where it states:

The production of food, feed, and fiber commodities, livestock and poultry, bees, fruits and vegetables, and sod, ornamental, nursery, and horticultural crops that are raised, grown, or produced for commercial purposes;

2. 15-7-202(1)(b)(i), MCA, states in pertinent part;

A parcel of land is presumed to be used primarily for raising agricultural products if the owner or the owner's immediate family members, agent, employee, or lessee markets not less than $1,500 in annual gross income from the raising of agricultural products produced by the land.

3. 15-7-202(6), MCA, states in pertinent part;

If land has been valued, assessed, and taxed as agricultural land in any year, it must continue to be valued, assessed, and taxed as agricultural until the department reclassifies the property. (emphasis applied)

4. 42.20.139 ARM and 42.20.141 ARM.

5. STAB decision PT-1987-112, Bitterroot Native Growers v. DOR.

ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject land shall be entered on the tax rolls of Flathead County by the Assessor of said County at the 1996 tax year value of $33,000 for the land at the classification and value determined by the DOR.

Dated this 11th of July, 1997.

BY ORDER OF THE

STATE TAX APPEAL BOARD

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PATRICK E. McKELVEY, Chairman

(S E A L)

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GREGORY A. THORNQUIST, Member

_____
LINDA L. VAUGHEY, Member

NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.

CERTIFICATE OF SERVICE

I certify that on this 11th day of July, 1997, a true and correct copy of the foregoing Nunc Pro Tunc Order was served by placing same in the United States Mail, postage prepaid, and addressed as follows:

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DONNA WESTERBUR
Administrative Assistant